



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
ENVIRONMENTAL PROTECTION BUREAU

**By Electronic Submission on FOIAonline.gov**

April 11, 2019

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

Re: Request for Information under Freedom of Information Act (5 U.S.C. § 552)

Dear National Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, and its implementing regulations, the Office of the Attorney General of the State of New York makes the following request for records in the possession of the U.S. Environmental Protection Agency (EPA) that were submitted by glider vehicle manufactures who are subject to applicable provisions of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 (the “Glider Rule”) published by EPA and the National Highway Traffic Safety Administration (“NHTSA”) at 81 Fed. Reg. 73,478 (October 25, 2016) and 82 Fed. Reg. 29,761 (June 30, 2017) (correcting table).

**Background on Related, Pending FOIA Request (Tracking #: EPA-HQ-2019-003336)**

On January 8, 2019, on behalf of the Office of the Attorney General of the State of New York, I submitted a FOIA request to EPA (the “January 2019 FOIA Request”). The January 2019 FOIA Request seeks, *inter alia*, records in the possession of EPA submitted by glider vehicle manufacturers subject to the Glider Rule, covering the model year ending December 31, 2017, and the model year ending December 31, 2018 when those documents became available.

The U.S. Postal Service delivered the January 2019 FOIA Request to EPA headquarters on or about January 29, 2019. On February 7, 2018, the letter was scanned by an EPA FOIA Officer, entered into the FOIAonline system, and assigned the tracking number EPA-HQ-2019-003336. The FOIAonline system indicates that the Estimated Completion Date was supposed to be March 7, 2019. However, as of today, more than one month later, the FOIAonline system indicates that my January 2019 FOIA Request is still in the “Assignment” phase, and that the “final disposition” remains “Undetermined.” The EPA FOIA Officer assigned to the January

2019 FOIA Request—Ms. Tanya Meekins—wrote to me in a March 27, 2019 e-mail that she does “not have a definitive time for completion” of the January 2019 FOIA Request.

Since EPA may have recently come into possession of new records responsive to the January 2019 FOIA Request relating to the model year ending December 31, 2018, I am submitting this supplemental FOIA request to renew our request for such records. Furthermore, we expressly reserve all rights with respect to the January 2019 FOIA Request, in particular as to requested records pertaining to the model year ending December 31, 2017.

### **Background on Glider Rule Reporting Requirements**

The Glider Rule imposes greenhouse gas (GHG) emissions and fuel efficiency standards on manufacturers of vehicles produced from glider kits and other glider vehicles beginning on January 1, 2017, with a transitional program for calendar year 2017 and certain special provisions available for “small manufacturers” (as defined in the Code of Federal Regulations). *See* 40 C.F.R. §§ 1037.635, 1037.150(t).

The Glider Rule provides, *inter alia*, that “[v]ehicle manufacturers (including assemblers) producing glider vehicles must comply with the reporting and recordkeeping requirements of § 1037.250.” *See* 40 C.F.R. § 1037.635(e)(2). In addition to various recordkeeping requirements, § 1037.250 imposes the following reporting requirements:

Within 90 days after the end of the model year, send the Designated Compliance Officer a report including the total U.S.-directed production volume of vehicles you produced in each vehicle family during the model year (based on information available at the time of the report). Report by vehicle identification number and vehicle configuration and identify the subfamily identifier. Report uncertified vehicles sold to secondary vehicle manufacturers. We may waive the reporting requirements of this paragraph (a) for small manufacturers.<sup>1</sup>

40 C.F.R. § 1037.250(a). Accordingly, manufactures of glider vehicles are now subject to the above reporting requirements to EPA.

### **Requested Records**

The Office of the Attorney General of the State of New York requests that EPA produce the following within twenty business days:

1. All reports under 40 C.F.R. § 1037.250(a) submitted for the model year ending December 31, 2018 by manufacturers of vehicles produced from glider kits and other glider vehicles to the applicable Designated Compliance Officer at EPA, including any reports concerning uncertified glider vehicles sold to secondary vehicle manufacturers.

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<sup>1</sup> For compression-ignition engines (i.e. the kinds of engines installed in glider vehicles), the Designated Compliance Officer means: Director, Diesel Engine Compliance Center, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105. [complianceinfo@epa.gov](mailto:complianceinfo@epa.gov); [epa.gov/otaq/verify](http://epa.gov/otaq/verify). *See* 40 C.F.R. §§ 801, 1037.101(c)(3).

2. Any correspondence between EPA and any manufacturer of glider vehicles claiming to qualify as a “small manufacturer” concerning waiver by EPA of the reporting requirements of 40 C.F.R. § 1037.250(a) for the model year ending December 31, 2018.
3. Any correspondence between EPA and any manufacturer of glider vehicles claiming the exemption under 40 C.F.R. § 1037.150(t)(1).

If possible, please provide any responsive information in electronic format. Please provide all of the requested records on a rolling basis. If any of the information sought in this request is deemed by EPA to be exempt from production pursuant to one or more exemptions set forth at 5 U.S.C. § 552(b), then please provide an explanation, for each such record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed.

If it is your position that any portion of the requested records is exempt from disclosure notwithstanding the mandatory presumption of openness, we request that you provide an index of those records as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). As you are aware, the *Vaughn* index should describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology of Washington, D.C. v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

#### **Fee Waiver Requested**

The Office the New York State Attorney General (the “Office”) is a noncommercial organization, which is not subject to review fees. In addition, the Office respectfully requests a waiver of search and copying fees.

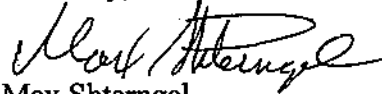
Under FOIA, agencies must waive such fees where disclosure is likely to contribute to public understanding of the operations and activities of the government and disclosure is not primarily in the commercial interest of the requester. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(1)(1). EPA has incorporated this requirement in its regulations for responding to FOIA requests. 40 C.F.R. § 2.107. This request is for non-commercial purposes. *See* 5 U.S.C. § 552(a)(4)(A)(iii). The Office of the New York State Attorney General is a law enforcement agency with no commercial interest in the requested information.

Disclosure is also “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government[.]” *See id.* The Office has a long history of participating in regulation of motor vehicle emission standards to ensure that public health is adequately protected. For example, New York joined EPA and other states and public health groups in defending against litigation challenging EPA’s and NHTSA’s joint adoption of the initial set of motor vehicle greenhouse gas emission and fuel economy standards for model years 2012 to 2016. *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102 (D.C. Cir. 2012). New York also joined other states in submitting Comments to EPA in opposition to the Proposed “Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits,” 82 Fed. Reg. 53,442 (November 16, 2017) (Proposed Repeal). Accordingly, the Office has

a deep interest in EPA's enforcement of the Glider Rule, including the Glider Rule's reporting requirements. Thus, the Office of the New York State Attorney General requests a fee waiver.

If this request for a fee waiver is denied, please contact us before incurring any costs in responding to this request. We ask that you provide your responses to this request electronically. Thank you for your attention to this matter. If you have any questions or wish to clarify any request, please do not hesitate to contact Assistant Attorney General Max Shterngel at Max.Shterngel@ag.ny.gov or 212-416-6692. We look forward to receiving your response to these requests within twenty business days, as required by FOIA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Max Shterngel', written in a cursive style.

Max Shterngel  
Assistant Attorney General  
Max.Shterngel@ag.ny.gov  
(212) 416-6692